

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION**

JIMMY SAIN

Plaintiff,

Case No.1:07-CV-1187

JURY DEMANDED

vs.

COMMISSIONER DAVE MITCHELL,
individually, (FORMER) COMMISSIONER
GERALD NICELY, individually, and
COLONEL MIKE WALKER, individually.

Defendants.

SECOND AMENDED COMPLAINT

I. PARTIES, JURISDICTION, AND VENUE

1. Plaintiff, Jimmy Sain, resides in Hardeman County.
2. The Defendants are Dave Mitchell, individually, Gerald Nicely, individually, and Mike Walker, individually. At times relevant hereto, Mitchell and Nicely were the Commissioners of the Tennessee Department of Safety and Walker a Colonel in the Department of Safety.
3. Jurisdiction and venue are proper in this Court as the acts complained of

occurred within this judicial district, and the Defendant conduct business within this judicial district.

II. FACTUAL BASES FOR SUIT

4. Plaintiff is a former Tennessee State Trooper.

5. While a Trooper, Plaintiff engaged in the political process by running for County Mayor of Hardeman County, Tennessee.

6. The State of Tennessee notified Plaintiff that, to run for political office, he must take a leave from his position of Trooper pursuant to the federal Hatch Act.

7. Before taking such leave, Plaintiff met with his Major and Defendant's Human Resources Manager for the Department of Safety. Plaintiff queried whether his position of Trooper would be returned to him in the event he was not successful in his election bid. These persons advised him that his position would be ready and available for him in the event he was unsuccessful and that he would be reinstated to active duty immediately.

8. Plaintiff relied upon this promise, took a leave from his position of Trooper, and ran for election. Plaintiff was unsuccessful in the election primary for County Mayor.

9. Plaintiff has repeatedly sought to return to work to his Trooper position. However, Defendant has refused to return Plaintiff to work.

10. On or about July 16, 2007, the State of Tennessee advised Plaintiff that its Department of Safety would not rehire Plaintiff because he had run for office and, based on that experience, he might do it again. Defendant expressly advised Plaintiff that it

would be “disinclined” to hire him and that “he might quit again if he runs for office in the future.”

11. This wilful conduct is motivated by Plaintiff’s exercise of his well known right to political participation under the First Amendment of the United States Constitution and these views are held by, attributable to, and acted upon pursuant to the instruction of the individual defendants Mitchell, Nicely and/or Walker who work, or worked, within the Department of Safety.

12. Trooper positions for Plaintiff have remained open and available.

13. Plaintiff seeks reinstatement to his position or front pay, full back pay and benefits, and compensatory damages owing to Defendant’s failure to abide by its promises.

III. CAUSES OF ACTION

14. Plaintiff brings the following claims against Defendants Mitchell, Nicely and Walker in their individual capacities:

A. **Violation of Section 1983 by Retaliating Against Plaintiff for Exercising His Constitutional Rights**

WHEREFORE, PREMISES CONSIDERED, PLAINTIFF requests this Second Amended Complaint be served upon the Defendants, that Plaintiff be awarded lost earnings, reinstatement and/or front pay, compensatory damages for emotional distress and any further legal or equitable relief to which he may be entitled.

Respectfully submitted,

GILBERT & RUSSELL, PLC

/s Justin S. Gilbert

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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I certify that a true and correct copy of this document was served upon the following, via the Court's Electronic Filing System, on the 12th day of February 2008.

John W. Dalton
Assistant Attorney General
Civil Litigation and State Services Division
P.O. Box 20207
Nashville, TN 37202-0207

s/ Justin S. Gilbert

Justin S. Gilbert